

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

---

State of Oklahoma, et al.,	)	
	)	
	)	05-CV-0329 GKF-SAJ
Plaintiffs,	)	
v.	)	<b><u>DECLARATION OF CHRISTOPHER H.</u></b>
	)	<b><u>DOLAN IN SUPPORT OF THE</u></b>
Tyson Foods, Inc., et al.,	)	<b><u>CARGILL DEFENDANTS' MOTION</u></b>
	)	<b><u>REGARDING SUMMARY JUDGMENT</u></b>
Defendants.	)	<b><u>BRIEFING</u></b>
	)	

---

I, CHRISTOPHER H. DOLAN, declare as follows:

1. I am one of the attorneys representing defendants Cargill, Inc. ("Cargill") and Cargill Turkey Production, LLC ("CTP") in the above-captioned case. I make this declaration of my own personal knowledge and information.

2. I offer the present affidavit in support of the Cargill Defendants' Motion for Summary Judgment in this action, which rests in large part on the Cargill Defendants' contention that Plaintiffs have not identified any evidence in the course of discovery that support Plaintiffs' claims that (a) turkey litter has run off from farms owned or operated by Cargill, CTP, or Cargill contract growers, and (b) that Cargill, CTP, or Cargill contract growers have violated Oklahoma laws and regulations governing the land application of turkey litter. To assist the Court in evaluating the merits of the Cargill Defendants' motion, and to save the Court the time and effort of reviewing the thousands of pages of documents that Plaintiffs cited in their discovery responses as supporting those claims, I have reviewed all of those documents and have identified the specific portions of those documents that deal with conduct and activities that Plaintiffs attribute to Cargill or CTP. The summary below represents my best efforts to identify all such potentially Cargill-related documents in the documents Plaintiffs produced or identified.

### **Background**

3. On August 11, 2006, Cargill, Inc. served interrogatories on Plaintiffs asking them to state the factual bases for their contentions that “any Cargill entity’s ‘poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and state laws and regulations’”<sup>1</sup> and that “the conduct and acts of any Cargill entity constitute a nuisance under Oklahoma law.”<sup>2</sup>

4. Following motion practice concerning these interrogatories, the Court required Plaintiffs to describe “with particularity each instance of which Plaintiff has knowledge where a Cargill entity has used poultry waste disposal practices in violation of federal and state laws and regulations” and “has created or maintained a nuisance in the State of Oklahoma.”<sup>3</sup> If Plaintiffs had “no direct evidence” and were instead “relying on circumstantial evidence, the response shall so state and shall describe the circumstantial evidence with as much particularity as possible.”<sup>4</sup>

5. In their latest supplementation to Interrogatory 9, Plaintiffs state:

At this time, the State has not identified direct evidence of a violation of the applicable statutes or regulations by either of the Cargill entities. The State has substantial circumstantial evidence as set forth in this response, including evidence found in grower files at ODAFF and evidence already produced to the Defendants, which demonstrates violations of applicable statutes or regulations by the Cargill entities.<sup>5</sup>

Plaintiffs’ current response to Interrogatory 13 is virtually identical.<sup>6</sup>

---

<sup>1</sup> Aug. 11, 2006 Cargill, Inc.’s First Interrog. and Req. for Produc. of Docs., Interrogatory 9 (Dkt. No. 1933-9) at p. 6.

<sup>2</sup> Aug. 11, 2006 Cargill, Inc.’s First Interrog. and Req. for Produc. of Docs., Interrogatory 13 (Dkt. No. 1933-9) at p. 7.

<sup>3</sup> May 17, 2007 Ord. and Op. (Dkt. No. 1150) at 8-9.

<sup>4</sup> *Id.*

<sup>5</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.’s Interrog. (Dkt. No. 1933-12) at 2-3.

<sup>6</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.’s Interrog. (Dkt. No. 1933-12) at . 7.

6. Following receipt of these responses, I thoroughly reviewed all non-sampling-related documents that Plaintiffs identified as responsive to Interrogatories 9 and 13. These documents included specific Oklahoma Department of Agriculture, Food and Forestry (“ODAFF”) grower files identified by Plaintiffs<sup>7</sup> and Investigator records found at OK-PL 0001-OK-PL 4332. These two sets of documents consisted of approximately 4,855 pages of documents. In addition to the ODAFF and Investigator documents specifically identified in Plaintiffs’ interrogatory responses, I also reviewed all other ODAFF files and Investigator documents that I could identify as relating to a Cargill company-owned farm or to a grower who either currently contracts or has historically contracted with Cargill or CTP to raise turkeys.

7. In my review of these ODAFF files, I found no evidence suggesting that ODAFF has ever issued a single fine or violation point against a grower under contract with a Cargill Defendant for any reason.<sup>8</sup> I found no evidence in the ODAFF files to support a finding that a release of poultry litter or its constituents occurred from a Cargill contract grower facility. Likewise, I found no evidence in my review of the Investigator documents to support a finding that a release of poultry litter or its constituents occurred from a Cargill contract grower facility.

### **Review of the ODAFF Grower Files**

8. Plaintiffs attached an exhibit detailing the “Cargill entity growers for which files have been assigned Bates numbers and produced to the Defendants” to their response to Cargill, Inc.’s Interrogatories 9 and 13.<sup>9</sup> Plaintiffs’ exhibit includes incomplete ODAFF grower files for

---

<sup>7</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.’s Interrog. (Dkt. No. 1933-12) at Exhibit 1.

<sup>8</sup> Exh. 1: pages 46-57 of Exhibit 20 to the August 28, 2008 deposition of Teena Gunter; Ex. 6: Gunter Dep. 107:14-110:10 (October 29, 2008).

<sup>9</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.’s Interrog. (Dkt. No. 1933-12) at Exhibit 1. The Plaintiffs’ Exhibit identifies that pages OKDA 70754 to OKDA 70761 are part of the ODAFF grower file for Bill Kay. However, it does not appear that this bates range was produced to Defendants and may be in error.

seven current or former Cargill contract growers. I reviewed all of these identified ODAFF records.

9. In addition to the ODAFF records identified by Plaintiffs, I also identified and reviewed thousands of pages of additional ODAFF records for the seven poultry operations identified by Plaintiffs, as well as ODAFF grower files for six additional poultry operations in the IRW that have contracted with a Cargill Defendant.

10. I found no evidence in any of these ODAFF's files that ODAFF has ever found that a poultry operation under contract with Cargill or CTP was in violation of its Animal Waste Management Plan ("AWMP"). ODAFF inspectors perform annual inspections at each Oklahoma registered poultry feeding operation.<sup>10</sup> In my review of the inspection records, I was able to identify 70 unique inspections of turkey growers under contract with Cargill or CTP. ODAFF inspectors indicated that the grower was in compliance with an AWMP for 46 inspections.<sup>11</sup> ODAFF inspectors indicated that the grower had not yet received an AWMP for 22 inspections.<sup>12</sup> ODAFF inspectors did not indicate whether the grower was in compliance with

---

<sup>10</sup> Exh. 2: Berry Dep at 47:20-48:14 (August 29, 2007).

<sup>11</sup> Exh. 3: OKDA0003985, OKDA0003982, OKDA0003979, OKDA0003974, OKDA0003971, OKDA0003964, 2009 Cargill supp-0046, ODAFF\_SUPP\_05-08\_001658, OKDA0016294, OKDA0016293, OKDA0016270, ODAFF-JD-001905, ODAFF-JDT-001-0000224, ODAFF\_SUPP\_05-08\_001779, OKDA0006340, OKDA0006330, OKDA0006327, OKDA0006322, ODAFF-JDT-001-0000628, ODAFF-JDT-001-0000624, ODAFF\_SUPP\_05-08\_001459, OKDA0010093, OKDA0010089, OKDA0010084, ODAFF-JD-016942, 2009 Cargill supp-00163, ODAFF\_SUPP\_05-08\_001370, ODAFF-JDT-001-0000773, ODAFF-JDT-001-0000770, ODAFF-JDT-001-0000766, 2009 Cargill supp-00185, OKDA0003042, OKDA0003038, OKDA0003034, OKDA0003031, OKDA0003026, ODAFF-JD-029312, 2009 Cargill supp-0014, ODAFF\_SUPP\_05-08\_002019, OKDA0001131, OKDA0017612, OKDA0017609, OKDA0017606, OKDA0001716, OKDA0001715, and OKDA0001712.

<sup>12</sup> Exh. 4: OKDA0003986, OKDA0016287, OKDA0016284, OKDA0016280, OKDA0016276, OKDA0006341, OKDA0006337, OKDA0010103, OKDA0010102, OKDA0010099, OKDA0010096, OKDA0003046, OKDA0003045, OKDA0001130, OKDA0001124, OKDA0015947, OKDA0015962, OKDA0015961, OKDA0015955, OKDA0015952, OKDA0015944, and OKDA0017614.

his or her AWMP for two inspections.<sup>13</sup> I was not able to identify a single instance where an ODAFF inspector indicated that a Cargill or CTP contract grower was in violation of an AWMP.<sup>14</sup>

11. I found nothing in the ODAFF files that indicate that any inspector ever found evidence of run-off of poultry litter or its constituents from a Cargill-related facility.

12. As part of my review of these ODAFF records, I searched for any evidence that identified a discharge to the waters of the Illinois River Watershed. I found no such evidence.<sup>15</sup> I identified only one instance where ODAFF even contacted a grower regarding a prior application of litter.

13. On January 4, 2000, Daniel Parrish of the Oklahoma Department of Agriculture (“ODA”) sent a letter to Ernest Doyle, a poultry grower under contract with Cargill, Inc., requesting that Mr. Doyle not spread litter on his field #3.<sup>16</sup> According to this letter, ODA received a checklist of an inspection, conducted on December 23, 1999, that stated “[l]itter was applied to Field #3 in September 1998. Based on a March 1998 soil tests no litter should have been spread on this field due to a P-Index of 1000 or 1250.”<sup>17</sup> The checklist also indicates that the alleged litter application on Field #3 took place on September 15, 1998 and consisted of 16

---

<sup>13</sup> Exh. 5: OKDA0006333 and OKDA000170.

<sup>14</sup> I did identify a number of what ODAFF Deputy General Counsel and Plaintiffs’ 30(b)(6) witness Teena Gunter refers to as technical violations, “a technical violation to me is didn’t get the education, only got two hours, should have had three. Didn’t renew on time. Didn’t fill out their paperwork appropriately. Didn’t file their reports appropriately. That’s what I’m tending to talk about when I look at the technical stuff. Soil and litter test, technically they didn’t match the right date.” Exh. 7, Gunter Dep. at 114:7-18 (October 29, 2008). Because these technical violations do not relate to questions of runoff, I have not included them in this declaration.

<sup>15</sup> See also, Exh. 6, Gunter Dep. at 111:13-112:4; 113:18-114:6 (October 29, 2008).

<sup>16</sup> Exh. 7: OKDA0003072.

<sup>17</sup> Exh. 8, OKDA0003043-45.

tons of litter.<sup>18</sup> Both the ODA letter and the inspection checklist reference a March 1998 soil test that was not in the documents Plaintiffs produced. Mr. Doyle did not have an AWMP at the time of the September 15, 1998 litter application.<sup>19</sup> I found no evidence in the ODAFF records that the September 15, 1998 land application resulted in any runoff of turkey litter or its constituents, nor did ODAFF find Mr. Doyle in violation of any law with respect to this application. I found no evidence that Mr. Doyle has applied litter on any of his fields since the September 15, 1998 application in the ODAFF records.

14. In their response to Interrogatories 9 and 13, Plaintiffs point to the ODAFF records of Mr. Doyle, now a grower under contract with CTP, and state that these records “circumstantially demonstrate violations of law for which Cargill is responsible.” Plaintiffs’ responses specifically point to the following documents:

- (a) records detailing Mr. Doyle’s export of litter off his property;
- (b) deficiency letters sent to Mr. Doyle regarding technical matters such as annual litter testing, catastrophic death loss procedures, and continuing education requirements;<sup>20</sup>
- (c) Mr. Doyle’s soil test data; and
- (d) the 1998 minimal litter application prior to receiving an AWMP discussed in Paragraph 13 above.<sup>21</sup>

---

<sup>18</sup> *Id.* Also note that 16 tons is a relatively small quantity of litter. It represents only 7.5 percent of the total litter identified in Mr. Doyle’s annual inspection checklist as from his poultry operation for the applicable period.

<sup>19</sup> *Id.* Mr. Doyle timely applied for an AWMP on October 29, 1998 and his first AWMP was drafted on February 1, 1999. See Exh. 9: OKDA0003046; Exh. 10: OKDA0003077-78.

<sup>20</sup> See Declaration Footnote 14, above

<sup>21</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.’s Interrog. (Dkt. No. 1933-12) at. 3-4 and 8-9.

The Plaintiffs discovery responses point to no evidence, direct or circumstantial, that appeared to suggest that litter from Mr. Doyle's property has entered the waters of the Illinois River Watershed. The 16 tons of litter identified in Paragraph 13 above is the only litter application on the Doyle property that I could identify in 11 years of ODAFF records for the Doyle Farm.

### **Review of Investigator Photos and Records**

15. In advance of the depositions of the investigators hired by Plaintiffs, I searched the documents produced by Plaintiffs to locate the Investigator forms and observations that the investigators generated during their efforts. I identified a total of 13,547 pages of documents and photos relating to the Investigators' work. Only 4,332 of these pages were referenced by the State as responsive to Cargill's Interrogatories 9 and 13.<sup>22</sup>

16. I reviewed these 13,547 documents to identify which ones involved Investigator observations of a Cargill-related facility. I used a broad definition of "Cargill-related facility" that included Cargill-owned Breeder farms, farms with an active contract with CTP, farms that had a contract with Cargill or CTP in the past, any observation that referenced in any way Cargill or a Cargill poultry brand, and any observation that referenced in any way active turkey operations (because CTP is the only defendant in this action currently involved with the raising of turkeys).

17. My review identified a total of 49 observations of Cargill-related facilities. Thirty eight of these observations were in the bates range identified by Plaintiffs in response to Cargill, Inc.'s Interrogatories 9 and 13,<sup>23</sup> and an additional 11 documents outside Plaintiffs' bates range

---

<sup>22</sup> Oct. 19, 2007 Supp. Resp. to Def. Cargill, Inc.'s Interrog. (Dkt. No. 1933-12) at 6 and 11.

<sup>23</sup> Exh. 11: OK-PL-0000004; OK-PL-0000517; OK-PL-0000661; OK-PL-0000632; OK-PL-0000637; OK-PL-0000796; OK-PL-0001047; OK-PL-0001185; OK-PL-0001210; OK-PL-0001166; OK-PL-0001506; OK-PL-0001738; OK-PL-0001935; OK-PL-0001892; OK-PL-0001883; OK-PL-0001928; OK-PL-0002487; OK-PL-0002607; OK-PL-0002652; OK-PL-

also detailed observations of Cargill-related facilities.<sup>24</sup> Using indices produced by Plaintiffs, I was able to identify in most instances the specific photographs referenced on the identified observation documents. I identified 154 photos associated with observations of Cargill related facilities. In total, of the 13,547 total Investigator documents and photos I was able to locate, 49 documents and 154 photos (approximately 1.5%) appeared to relate to a Cargill, CTP, or Cargill contract grower facility.

18. In review of these 49 observations of Cargill-related facilities, I did not identify any instances where an Investigator measured the distance between land application of any material and a water body.

THIS CONCLUDES MY DECLARATION

s/ Christopher H. Dolan

Christopher H. Dolan

fb.us.4010196.02

---

0002934; OK-PL-0003059; OK-PL-0002865; OK-PL-0002582; OK-PL-0002870; OK-PL-0002873; OK-PL-0002996; OK-PL-0002703; OK-PL-0003823; OK-PL-0003854; OK-PL-0003862; OK-PL-0003712; OK-PL-0003835; OK-PL-0003856; OK-PL-0003425; OK-PL-0003357; OK-PL-0003345; OK-PL-0003370; and OK-PL-0000943-44.

<sup>24</sup> Exh. 12: OK-PL-0004900; OK-PL-0004912; OK-PL-0004913; OK-PL-0004870; OK-PL-0004920; OK-PL-0004890; OK-PL-0005008; OK-PL-0005666; OK-PL-0005570; OK-PL-0005800 and OK-PL-0012677.